

under which the mortgage is insured and the date of insurance.

(2) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been met to HUD's satisfaction, HUD shall indicate on the original mortgage note the total of all advances approved for insurance and again endorse such instrument.

(b) *Section 242/223(f) refinancing/acquisition.* (1) In cases that do not involve advances of mortgage proceeds, endorsement shall occur after all relevant terms and conditions have been satisfied, including, if applicable, completion of any limited rehabilitation, or upon assurance acceptable to the Commissioner that all limited rehabilitation will be completed by a date certain following endorsement.

(2) In cases where advances of mortgage proceeds are used to fund limited rehabilitation, endorsement shall occur as described in paragraph (a) of this section immediately above, for new construction/substantial rehabilitation.

(c) *Contract rights and obligations.* The Commissioner and the mortgagee or lender shall be bound from the date of initial endorsement by the provisions of the Contract of Mortgage Insurance stated in subpart B of part 207, which is hereby incorporated by reference into this part.

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§ 242.40 Mortgagee certificate.

At initial endorsement, the mortgagee shall execute a Mortgagee Certificate in a form prescribed by HUD.

§ 242.41 Certification of cost requirements.

Before initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and HUD shall enter into an agreement in form and content satisfactory to HUD for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(a) To execute a Certificate of Actual Costs, upon completion of all physical

improvements on the mortgaged property.

(b) To apply any cost savings in accordance with the provisions below.

§ 242.42 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by HUD, shall be submitted upon completion of the physical improvements to the satisfaction of HUD and before final endorsement, except that in the case of an existing hospital that does not require substantial rehabilitation and where the commitment provides for completion of specified repairs after endorsement, a supplemental certificate of actual cost will be submitted covering the completed costs of any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, any of its officers, directors, stockholders, partners, or other entity member ownership, of construction and other costs, as prescribed by HUD.

(b) The Certificate of Actual Cost shall be verified by an independent certified public accountant or independent public accountant in a manner acceptable to HUD.

(c) Upon HUD's approval of the mortgagor's certification of actual cost, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

§ 242.43 Application of cost savings.

At the sole discretion of HUD, any cost savings shall be used to:

(a) Reduce the principal amount of the mortgage and the mortgagor's cash equity contribution proportionally, unless the mortgagor elects to have a greater portion of the savings used to reduce the mortgage; and/or

(b) Fund any additional construction or substantial rehabilitation approved by HUD.